



This is the 1st affidavit
of Rosalind Dawes in this case
and was made on April 3, 2013

No. 131698
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ESPRESSO CAPITAL PARTNERS TAX CREDIT II FUND LIMITED
PARTNERSHIP

PLAINTIFF

AND:

IMOGO MOBILE TECHNOLOGIES CORP. and STEWART IRVINE

DEFENDANTS

AFFIDAVIT

I, Rosalind Dawes, of 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia,
MAKE OATH AND SAY AS FOLLOWS:

1. I am a Legal Assistant employed by Davis LLP, Barristers & Solicitors, solicitors for the Plaintiff herein and I have knowledge of the facts hereinafter deposed to except those which are stated to be on information and belief and where so stated, I verily believe them to be true.
2. I did, on March 8, 2013 serve the Defendant, Imogo Mobile Technologies Corp., with the Notice of Civil Claim in this action, now produced and shown to me and marked as Exhibit "A" to this my Affidavit, by sending a true copy by mail through a prepaid registered letter addressed to the said Defendant at 600-1090 West Georgia Street, Vancouver, British Columbia, which is the registered office of the said Defendant.

54

A Commissioner for taking Affidavits for
British Columbia.

Rosalind Dawes

MICHAEL HAMATA
Barrister and Solicitor
DAVIS LLP
2800-666 Burrard Street
Vancouver, B.C. V6C 2Z7
604.687.9444

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAR 07 2013

S-131698



No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ESPRESSO CAPITAL PARTNERS TAX CREDIT II FUND
LIMITED PARTNERSHIP

PLAINTIFF

AND:

IMOGO MOBILE TECHNOLOGIES CORP. and STEWART IRVINE

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

This is Exhibit "A" referred to in the
Affidavit of Rosalind Dawes
sworn before me at Vancouver, B.C.
This 3rd day of April, 2013.

[Signature]
A Commissioner for taking Affidavits
for British Columbia

This is Exhibit "A" referred to in the Affidavit of
sworn before me at Vancouver, B.C.
This day of 20.....
A Commissioner for taking Affidavits
for British Columbia

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

1. The Plaintiff is a British Columbia limited partnership having an office at 400-999 West Hastings Street, Vancouver, British Columbia, V6C 2W2.
2. The Defendant Imogo Mobile Technologies Corp. (the "**Company**") is a corporation duly incorporated under the laws of British Columbia, having an office at 203-4211 Kingsway Avenue, Burnaby, British Columbia, V5H 1Z6.
3. The Defendant Stewart Irvine (the "**Guarantor**") is an individual and the sole director of the Company, having his primary residence at 26123 126 Avenue, Maple Ridge, British Columbia, V2W 1C4.
4. On or about April 23, 2012, the Plaintiff advanced funds in the amount of \$200,000.00 (the "**Funds**") to the Company, pursuant to a Loan Agreement dated April 23, 2012 (the "**Loan**") as evidenced by a promissory note (the "**Promissory Note**") executed by the Company in favour of the Plaintiff, whereby the Company promised to pay to the Plaintiff the Loan plus interest at the rate of 2.25% per month (30.60% per annum), calculated and compounded monthly, not in advance.
5. On or about April 23, 2012, the Company entered into a general security agreement (the "**GSA**") whereby the Company granted to the Plaintiff a security interest, mortgage and charge over the undertakings of the Company including all present and after acquired personal property.

6. As further security for the Loan, the Guarantor granted to the Plaintiff a guarantee (the **"Guarantee"**) dated April 23, 2012 whereby the Guarantor unconditionally guaranteed the obligations of the Company, to a maximum of \$50,000 plus interest, plus all charges, costs and expenses payable in connection therewith, as of the date of demand by the Plaintiff on the Guarantee, including, without limitation, repayment of the Loan.
7. The Loan and interest accrued thereon were payable in full on the earlier of the following dates:
 - (a) two business days after the Company received a refund claimed by the Company from the Government of Canada for the Company's T661 Scientific Research and Experimental Development Expenditures Claim (the **"SRED Claim"**) for the Company's fiscal year;
 - (b) if the SRED Claim refund was less than the amount of the Loan, the Loan was immediately due and payable on the date the SRED Claim refund was received;
 - (c) if the SRED Claim was denied in full, the Loan was immediately due and payable;
or
 - (d) 12 months after the Loan was advanced on April 23, 2012.
8. Pursuant to clause 4.1 of the Loan, the Company makes several covenants (the **"Covenants"**) to the Plaintiff, including:
 - (a) to remain current and in good standing with Canada Revenue Agency; and
 - (b) to provide monthly projected cash flow statements to the Plaintiff.
9. Pursuant to clause 5.1(d) of the Loan, a default of a Covenant is an event of default under the Loan (**"Event of Default"**) unless it is cured within fifteen (15) days from notice given to the Company from the Plaintiff of such default or the Plaintiff agrees to waive such default.
10. The Plaintiff further has reason to believe the SRED Claim will be materially less and accordingly substantially impaired from the date of the Loan, which is an additional Event of Default under clause 5.1(g) of the Loan.

11. The Plaintiff provided the Company with notice of the following Events of Default under the Loan, which remain uncured:
 - (a) paragraph 4.1(c) to remain current and in good standing with the Canada Revenue Agency;
 - (b) paragraph 4.1(h) to provide projected cash flow statements; and
 - (c) paragraph 5.1(g) the Plaintiff has reasonable grounds to believe the amount of the SRED Claim will be materially less and accordingly is substantially impaired.
12. Pursuant to clause 5.2 of the Loan, upon the occurrence of an Event of Default, the Plaintiff may declare immediately due and payable the outstanding balance of the Loan and any accrued interest thereon without presentment of notes and without demand.
13. On February 21, 2013, the Plaintiff's counsel sent to the Defendants letters demanding payment of the full outstanding balance of the Loan in the sum of \$249,042.40, being the outstanding balance owing under the Loan as of that date.
14. On February 21, 2013, the Plaintiff's counsel also sent to the Guarantor a letter demanding payment of the sum of \$50,000.00, being the amount unconditionally guaranteed under the Guarantee in an Event of Default under the Loan.
15. The Defendants have failed to make any payments to the Plaintiff.
16. As at February 21, 2013, the outstanding balance owing under the Loan is \$249,042.40 with interest continuing to accrue at the rate set out in the Promissory Note and costs (the "Debt").

Part 2: RELIEF SOUGHT

1. Judgment against the Company for the sum of \$249,042.40, plus interest at the rate of 2.25% per month (30.60% per annum), from and after February 21, 2013, until the date of payment or judgment;
2. judgment against the Guarantor for the sum of \$50,000.00, plus interest at the rate of 2.25% per month (30.60% per annum), from and after February 21, 2013, until the date of payment or judgment;
3. costs; and

4. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Defendants breached their agreements with the Plaintiff, including, without limitation the Loan, the Promissory Note, the Guarantee and the GSA, by refusing and/or neglecting to repay to the Plaintiff the Debt, together with all applicable interest and costs.

Plaintiff's address for service: Lance Williams
Davis LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Fax number address for service (if any): 604.687.1612

E-mail address for service (if any): N/A

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

March 7, 2013

Dated

Davis LLP
Signature of lawyer for plaintiff
Davis LLP (H. Lance Williams)

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Debt

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
 - ☐ construction defects
 - ☐ real property (real estate)
 - ☐ personal property
 - ☐ the provision of goods or services or other general commercial matters
 - ☐ investment losses
 - ☒ the lending of money
 - ☐ an employment relationship
 - ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4: THIS CLAIM INVOLVES:

Law of Contract

Debtor-Creditor Law

Personal Property Security Act (BC)

**Tracking Number**

RW754083413CA

Product Type: Registered Mail**Track History**

Date	Time	Location	Description	Retail Location	Signatory Name
2013/03/11	10:01	VANCOUVER	Item successfully delivered		
2013/03/11	10:01		Signature image recorded for Online viewing		M MARIJOVIC
2013/03/11	09:01	VANCOUVER	Item out for delivery		
2013/03/11	07:06	VANCOUVER	Item processed at local delivery facility		
2013/03/08	19:57	RICHMOND	Item processed at postal facility		
2013/03/08	15:29	VANCOUVER	Item accepted at the Post Office		

Shipping Options and Features for this Item

Signature Required

© 2013 Canada Post Corporation

This is Exhibit "B" referred to in the
Affidavit of Rosalind Dawes

sworn before me at Vancouver, B.C.

This 3rd day of April 20.13

.....
A Commissioner for taking Affidavits
for British Columbia



Registered Receipt (Bulk)

This receipt is necessary if enquiry is desired. Fragile and perishable articles are not indemnified against damage. Item(s) and fees information is available on request from your Postal Outlet.

Récepté (en nombre) Recommandé
A produire en cas de réclamation. Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

Expéditeur: **DAVIS LLP**

Barristers & Solicitors

28th Floor, 666 Burrard Street

Vancouver, B.C. V6C 2Z7

604.687.9444

Sender Instructions - Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

- A Complete and remove customer receipt
- B Remove paper backing from receipt
- C Affix receipt to this form

Delivery confirmation may be obtained by calling 1-888-550-6333 or through the internet at www.canadapost.ca

Instructions pour l'expéditeur - Avis: Récepté en nombre, pour 3 articles et plus. Doit être complété avant de déposer à l'installation postale.

- A Remplissez et retirez le récepté du client
- B Retirez la pellicule protectrice du récepté
- C Collez le récepté sur cette formule

Une confirmation de la livraison peut être obtenue en composant le 1 800 550 6333 ou par internet au www.postescanada.ca

(1)



POD REGISTERED DOMESTIC
RECOMMANDÉ RÉGIME INTÉRIEUR



RECU DU CLIENT

Image Mobile Technologies Corp.

c/o Beadle Woods

600-1090 West Georgia Street

Vancouver, B.C. V6E 3V7

33-086-584 (11-04) **83439-00017 (NRP)** RW 754 083 413 CA

FOR DELIVERY CONFIRMATION	CONFIRMATION DE LA LIVRAISON
www.canadapost.ca	www.postescanada.ca
or/ou	
1 888 550-6333	

MAR 08 2013 645001 VANCOUVER BC V7X 1A0

(2)



POD REGISTERED DOMESTIC
RECOMMANDÉ RÉGIME INTÉRIEUR

Ms. Miriam Knight

Ms. Miriam Knight

3303 Bay Street, Suite 2400

Bay Adelaide Centre Box 20

Toronto, ON M5H 2T6

33-086-584 (11-04) **78080-00001 (DHX/sx)** RW 754 083 461 CA

FOR DELIVERY CONFIRMATION	CONFIRMATION DE LA LIVRAISON
www.canadapost.ca	www.postescanada.ca
or/ou	
1 888 550-6333	

MAR 08 2013 645001 VANCOUVER BC V7X 1A0

(3)



POD REGISTERED DOMESTIC
RECOMMANDÉ RÉGIME INTÉRIEUR



RECU DU CLIENT

Ms. Marie-Josée

Ms. Marie-Josée

1001-1001 West Georgia Street

Vancouver, B.C. V6E 3V7

33-086-584 (11-04) **44688-00001 (DHX/RT)** RW 754 083 784 CA

FOR DELIVERY CONFIRMATION	CONFIRMATION DE LA LIVRAISON
www.canadapost.ca	www.postescanada.ca
or/ou	
1 888 550-6333	

MAR 08 2013 645001 VANCOUVER BC V7X 1A0

(4)



Registered International/USA International/É. U.

Lumina Diamonds

Lumina Diamonds

3rd Floor, Gopinath Gems

Opp. Shyam Marble, Bambawadi

Near Balashram School, Katargam,

Surat Gujarat, India 395004

09825316568

33-086-582 (98-10) **46533-00003 (RQS) RT 932 060 420 CA**

FOR DELIVERY CONFIRMATION	CONFIRMATION DE LA LIVRAISON
www.canadapost.ca	www.postescanada.ca
or/ou	
1 888 550-6333	

MAR 08 2013 645001 VANCOUVER BC V7X 1A0

(5)

(6)



Date: 2013/04/03

Dear Sir or Madam:

Madame, Monsieur,

Please find below the scanned delivery date and signature of the recipient of the item identified below:

Vous trouverez ci-dessous la date de la livraison et la signature de la personne qui a accepté l'envoi sous mentionné:

Item Number

Numéro d'article

RW754083413CA

Product Name

Nom de produit

Registered Mail/Courrier recommandé

Reference Number 1

Numéro de référence 1

Not Applicable/Sans objet

Reference Number 2

Numéro de référence 2

Not Applicable/Sans objet

Delivery Date (yyyy/mm/dd)

Date de livraison (aaaa/mm/jj)

2013/03/11

Signatory Name

Nom du signataire

M MARIJOVIC

Signature

Signature

Yours sincerely,

Salutations distinguées,

Customer Relationship Network
1-888-550-6333

(from outside of Canada 1 416 979-8822)

Réseau des relations avec la clientèle
1 888 550-6333

(de l'extérieur du Canada 1 416 979-8822)

This copy conforms to the delivery date and signature of the individual who accepted and signed for the item in question. This information has been extracted from the Canada Post data warehouse.

Cette copie est conforme à la date de livraison et à l'image de signature de la personne qui a accepté les envois susmentionnés. Ces informations ont été extraites de la banque de données de Postes Canada.

No. 131698
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ESPRESSO CAPITAL PARTNERS TAX CREDIT II
FUND LIMITED PARTNERSHIP

PLAINTIFF

AND:

IMOGO MOBILE TECHNOLOGIES CORP. and
STEWART IRVINE

DEFENDANTS

AFFIDAVIT

DAVIS LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No. 83439-00017

LZW/KSP/ksp